

## AN ACT

To repeal sections 339.105, 339.120, and 339.130, RSMo, and to enact in lieu thereof three new sections relating to real estate brokers.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 339.105, 339.120, and 339.130, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 339.105, 339.120, and 339.130, to read as follows:

339.105. 1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

2. Each broker shall notify the commission of the name of his or her intent not to maintain an escrow account, or the name

of the financial institution in which each escrow or trust account is maintained, the name and number of each such account, and shall file written authorization directed to each financial institution to allow the commission or its authorized representative to examine each such account; such notification and authorization shall be submitted on forms provided therefor by the commission. A broker shall notify the commission within ten business days of any change of his or her intent to maintain an escrow account, the financial institution, account numbers, or change in account status.

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

4. [Whenever the ownership of any escrow moneys received by a broker pursuant to this section is in dispute by the parties to a real estate sales transaction, the broker shall report and deliver the moneys to the state treasurer within three hundred sixty-five days of the date of the initial projected closing date in compliance with sections 447.500 to 447.595, RSMo. The parties to a real estate sales transaction may agree in writing that the funds are not in dispute and shall notify the broker who

is holding the funds.

5.] A broker shall not be entitled to any money or other money paid to him or her in connection with any real estate sales transaction as part or all of his or her commission or fee until the transaction has been consummated or terminated, unless agreed in writing by all parties to the transaction.

[6.] 5. When, through investigations or otherwise, the commission has reasonable cause to believe that a licensee has acted, is acting or is about to act in violation of this section, the commission may, through the attorney general or any assistants designated by the attorney general, proceed in the name of the commission to institute suit to enjoin any act or acts in violation of this section.

[7.] 6. Any such suit shall be commenced in either the county in which the defendant resides or in the county in which the defendant has acted, is acting or is about to act in violation of this section.

[8.] 7. In such proceeding, the court shall have power to issue such temporary restraining or injunction orders, without bond, which are necessary to protect the public interest. Any action brought under this section shall be in addition to and not in lieu of any other provisions of this chapter. In such action, the commission or the state need not allege or prove that there is no adequate remedy at law or that any individual has suffered any economic injury as a result of the activity sought to be

enjoined.

339.120. 1. There is hereby created the "Missouri Real Estate Commission", to consist of seven persons, citizens of the United States and residents of this state for at least one year prior to their appointment, for the purpose of carrying out and enforcing the provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860. The commission shall be appointed by the governor with the advice and consent of the senate. All members, except one voting public member, of the commission must have had at least ten years' experience as a real estate broker prior to their appointment. The terms of the members of the commission shall be for five years, and until their successors are appointed and qualified. Members to fill vacancies shall be appointed by the governor for the unexpired term. The president of the Missouri Association of Realtors in office at the time shall, at least ninety days prior to the expiration of the term of the board member, other than the public member, or as soon as feasible after the vacancy on the board otherwise occurs, submit to the director of the division of professional registration a list of five Realtors qualified and willing to fill the vacancy in question, with the request and recommendation that the governor appoint one of the five persons so listed, and with the list so submitted, the president of the Missouri Association of Realtors shall include in his or her letter of transmittal a description of the method by which the names were chosen by that

association. The commission shall organize annually by selecting from its members a chairman. The commission may do all things necessary and convenient for carrying into effect the provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860, and may promulgate necessary rules compatible with the provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860. Each member of the commission shall receive as compensation an amount set by the commission not to exceed [fifty] seventy-five dollars for each day devoted to the affairs of the commission, and shall be entitled to reimbursement of his or her expenses necessarily incurred in the discharge of his or her official duties. The governor may remove any commissioner for cause.

2. The public member shall be at the time of his or her appointment a citizen of the United States; a resident of this state for a period of one year and a registered voter; a person who is not and never was a member of any profession licensed or regulated pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860 or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by sections 339.010 to 339.180 and sections 339.710 to 339.860, or an activity or organization directly related to any profession licensed or regulated pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860. All members, including public members, shall be chosen from lists submitted by the director of

the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.

3. The commission shall employ such board personnel, as defined in subdivision (4) of subsection 15 of section 620.010, RSMo, as it shall deem necessary to discharge the duties imposed by the provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860.

4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 339.010 to 339.180 and sections 339.710 to 339.860 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently

held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, shall be invalid and void.

339.130. The commission may sue and be sued in its official name, and shall have a seal which shall be affixed to [all licenses,] certified copies of records and papers on file, and to such other instruments as the commission may direct, and all courts shall take judicial notice of such seal. Copies of records and proceedings of the commission, and of all papers on file in its office, certified under the said seal shall be received as evidence in all courts of record. The office of the commission shall be at Jefferson City.